IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.4780/1998.

Harlal.

VERSUS

Sub Divisional Officer, Alwar & Others.

04.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.S.R.Yadav]
Mr.Anil Jain] for the petitioner.
Ms.Shilpi Gupta on behalf of
Mr.R.K.Mathur, for the respondents.

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This writ petition has been filed by the petitioner who participated in the auction held in pursuance of the Rajasthan Agriculture Credit Operation (Removal of Difficulties) Act, 1974 initiated by the respondent No.2 Syndicate Bank against the respondents No.3 and 4 on account of non-payment of the loan for the money. In pursuance of the aforesaid proceedings, the land of the respondents No.3 and 4 was to auction on 25.07.1985 for a sum of Rs.24,200/- and the petitioner having given the aforesaid highest bid in pursuance of the bid also deposited 1/4th of the amount. The respondents No.3 and 4 being members of Scheduled Caste, a question arise as to whether in view of the provisions contained in Section 42B of the Rajasthan Tenancy Act, the bank had right to sell the land of the members of Scheduled Caste and further the same having been purchased in auction by the petitioner who is not a member of Scheduled Caste, such a sale would be a valid sale or not? Since there was some amount of dispute and there was no clear pronouncement on this aspect of the matter, it appears

that an objection came to be raised before the learned S.D.O. before whom the application had been filed and the learned S.D.O. vide Annexure-2 ordersheet dated 21.03.1997 held that the auction proceedings held on 24.07.1985 in respect of the land of respondents No.3 and 4 who are members of Scheduled Caste are bad in law and consequently the said bid was not accepted by the order dated 21.03.1997.

The petitioner challenged the aforesaid order of S.D.O. before the learned District Judge, Alwar, who transferred the same for adjudication to the learned Additional District Judge No.2, Alwar. The learned Additional District Judge No.2, Alwar by his order dated 23.07.1998 dismissed the appeal holding that the appeal was not maintainable. The order of the learned Additional District Judge has been filed as Annexure-3.

It appears that in the meanwhile, the petitioner filed a suit before the learned Civil Judge (Junior Division), Alwar and in the said suit also filed an application for the grant of temporary injunction restraining the defendants not to cancel the sale in favour of the petitioner.

The judgment passed on the application for temporary injunction dated 13.02.1997 has been filed as Annexure-1. It appears that after the auction proceedings the bank had some doubts as to whether it was entitled to auction the property particularly the agricultural land in this case belonging to a member of the Scheduled Caste and whether the person belonging to a caste other than a Scheduled Caste could bid

successfully and purchase the land belonging to the debtor who is a member of the Scheduled Caste. The relevant portion appears at page 20 of the paper book, which reads as follows:-

> "यह तथ्य भी स्वीकृत है कि विवादित आराजीयात परसादी लाल पुत्र मोहन लाल जाति जटिया के स्वामित्व व अधिपत्य की पूर्व में थी जिसने सिण्डीकेट बैंक से ऋण लिया वह उस ऋण को नहीं चुका पाया इसलिये बैंक ने परसादीलाल की भूमि को अपने कब्जे व अधिपत्य में ले लिया बैंक ने अप्रार्थी सं. 1 व 3 को रोडा एक्ट के तहत इस भूमि की नीलामी की कार्यवाही के लिये सौंपा और यह नीलामी सर्वप्रथम 25.7.85 को की गयी तत्पश्चात् प्रार्थी हरलाल ने दिनांक 26.8.85 को एक प्रार्थनापत्र एस डी ओ अलवर को प्रस्तुत किया कि वह नीलामी की शेष राशि 18150 रूपये जमा कराने को तैयार है। इसलिये उसका यह पैसा जमा करके उसे खातेदारी के अधिकार दिये जावें । प्रार्थनापत्र की एक फोटोकॉपी इस प्रार्थनापत्र के साथ पेश हुई है । दिनांक 21.8.85 को कार्यालय उपजिलाधीश अलवर ने पत्र क्रमांक 6485-86 से मैंनेजर सिण्डीकेट बैंक को यह लिखा कि जिस भूमि की नीलामी की जा रही है उसके बकायादार जाति से चमार हैं जो एस सी में आते हैं और इस बकायादारान की नीलामी की भूमि आराजी सवा दो बीघा की जो बोली लगाई गयी है बोली लगाये जाने व्यक्ति स्वर्ण जाति का होना पाया जाता है । पत्र में आगे अंकित किया गया है कि रिम्यूवल आफ डिफाकल्टी रूल्स 1976 के अनुसार एस सी, एस टी के व्यक्ति की है तो स्वर्ण जाति के द्वारा बोली नहीं लगायी जा सकती । इसलिये आप अपने प्रतिनिधि को भेजे और बताये कि क्या इन नियमों मे संशोधन हुआ है या नहीं । इसके अलावा एस डी ओ अलवर द्वारा पत्र दिनांकित 6.2.87 भी लिखा गया गया जिसमें भी पूर्व पत्र का ही हवाला दिया गया । एक अन्य पत्र क्रमांक 4977 दिनांक 2.11.87 को भी लिखा गया जिसमें भी यही हवाला दिया गया कि स्वर्ण जाति के व्यक्ति ने बोली लगायी है जो राज्य सरकार के नियमों के अनुसार नीलामी नहीं लगा सकता । इसी बीच प्रार्थी हरलाल ने एक पत्र एस डी ओ अलवर को दिनांक 20.8.85 को इस आशय का प्रस्तुत किया कि उससे 18150 रूपये जमा करा लिये जावे और उसे खातेदारी के अधिकार दिये जावें । इस पर एस डी ओ अलवर ने इस प्रार्थना पत्र पर यह लिखा कि भूमि एस सी के व्यक्ति की थी बोली स्वर्ण जाति के व्यक्ति ने लगायी है इसलिये वार्ता हेतू बैंक मैनजर को बुलाया जावे । यह भी लिखा कि स्वर्ण जाति का व्यक्ति एस सी की जमीन नीलामी में नहीं खरीद सकता । इसी प्रकार एक पत्र 29.7.92 को भी लिखा गया। जिसके जबाव में प्रबन्धक बैंक की ओर से यह लिखा गया कि बकायादार रामप्रसाद, रामस्वरूप, प्रसादी से राजस्थान कृषि क्रेडिट आपरेशन रिम्यूवल आफ डिपिकल्टीज एक्ट 1976 और लैण्ड रेवेन्यू एक्ट 1957 की धारा 230, 235, 237 के तहत वसूली करने को इच्छुक नहीं है । बैंक ने बकायादारों के विरूद्ध दीवानी न्यायालय में वाद दायर कर दिया है । अत: उक्त एक्ट के तहत वसूली की कार्यवाही पुष्टि सूचित करने की कृपा करें ।
>
> उपरोक्त पत्रों से जिनका हवाला ऊपर दिया गया है यह बात स्पष्ट

होती है कि बैंक व एस डी ओ अलवर के मध्य पत्राचार हुए हैं । साथ में प्रार्थी ने समय समय पर नीलामी की शेष बकाया राशि जमा कराने हेतु निवेदन किया है । अंत में उसे बैंक ने अपने पत्र दिनांक 31.12.93 क्रमांक 8315/25/129 में उपजिलाधीश अलवर को यह लिखा है कि वह रोडा एक्ट के तहत कोई कार्यवाही नहीं चाहते हैं । कार्यवाही निरस्त कर दी जावे ।"

Learned counsel for the petitioner was asked regarding the outcome of the suit and it was admitted that so far as the suit is concerned, the same has since been dismissed.

The facts, therefore, which emerge is that the bank which is the creditor has put the agricultural land belonging to the respondents No.3 and 4 to auction through the provisions of Rajasthan Agriculture Credit Operation (Removal of Difficulties) Act, 1974 and in the auction proceedings the petitioner not being a member of Scheduled Caste purchased the aforesaid land by giving the highest bid. The petitioner also deposited 1/4th of the sale price in pursuance of the auction. However, in the meanwhile, the respondent Bank of its own wisdom has decided not to continue with the proceedings under the Rajasthan Agriculture Credit Operation (Removal of Difficulties) Act, 1974 has withdrawn the same by writing to the S.D.O. as has been mentioned in the judgment (Annexure-1) quoted above. Thus, when the creditor does not wish to press his application for the realization of the amount against the debtors respondents No.3 and 4, the auction purchaser whose rights only accrued from the proceedings before the S.D.O. cannot compel the creditor, in my view to give effect to the auction at which he has made a bid to conclude the contract of sale in his favour and accept the balance amount. However, having held so, I am of the

view that the petitioner having deposited 1/4th of the sale amount in pursuance of the auction bid proceedings held in the year 1985, the petitioner at best would be entitled to the refund of amount which he has deposited in pursuance of the auction. The petitioner would also be entitled to get interest on the said amount from the respondent-Bank with whom the amount had been deposited. Apart from the above, the petitioner is not entitled for any compensation as no relief can be granted to the petitioner in the facts and circumstances of the present case. The writ petition is consequently, disposed of, as above.

At the time when the writ petition came up for admission, it was submitted that the question as to whether financial institution has the right to put the agricultural land belonging to a member of Scheduled Caste/Scheduled Tribe to auction for realization of the debt, is subject matter which is pending in reference before the Larger Bench. On account of the aforesaid, the writ petition was admitted vide order dated 03.07.2006. However, during the course of arguments, having noticed the peculiar facts and circumstances, as mentioned in the order (Annexure-1) and which has been quoted above, I am not inclined to go into the aforesaid question for which the writ petition was admitted.

Consequently, the writ petition stands disposed of, as indicated above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.